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April 7, 2005

**DECISION AND ORDER  
OFFICE OF HEARINGS AND APPEALS**

**Hearing Officer's Decision**

Case Name: Personnel Security Hearing

Date of Filing: November 2, 2004

Case Number: TSO-0168

This Decision concerns the eligibility of XXXX XXXXXX XXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."<sup>1/</sup> A Department of Energy (DOE) Operations Office denied the individual's request for an access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual should be granted an access authorization. As set forth in this Decision, I have determined that the individual's request for a security clearance should be denied at this time.

**I. Background**

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with DOE, contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

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<sup>1/</sup> An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to variously in this Decision as an access authorization or security clearance.

In this instance, the individual requested a security clearance from DOE after gaining employment with a DOE contractor. However, the local DOE security office (DOE Security) initiated formal administrative review proceedings by informing the individual that his access authorization was being denied pending the resolution of certain derogatory information that created substantial doubt regarding his eligibility. This derogatory information is described in a Notification Letter issued to the individual on July 14, 2004, and falls within the purview of potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections h, j and l. More specifically, the Notification Letter alleges that the individual has: 1) “[a]n illness or mental condition which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability,” 2) “[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse,” and 3) “[e]ngaged in unusual conduct or is subject to circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause him to act contrary to the best interests of national security.” 10 C.F.R. §§ 710.8(h), (j) and (l) (Criterion H, Criterion J and Criterion L, respectively). The bases for these findings are summarized below.

With regard to Criteria H and J, the Notification Letter states that the individual was evaluated by a DOE consultant-psychiatrist (DOE Psychiatrist) who diagnosed the individual with Alcohol Dependence. According to the DOE Psychiatrist's report, this is a mental condition that causes or may cause a significant defect in the individual's judgment or reliability. In reaching this diagnosis, the DOE Psychiatrist considered that the individual's admittedly excessive use of alcohol while in the military from June 1999 to December 2001, which ultimately led to the individual being discharged. Under Criterion L, the Notification Letter states that while in the military the individual was arrested and received an Article 15 (military non-judicial punishment) on three occasions, twice for underage drinking and once for Driving Under the Influence (DUI), and was decertified from the Personnel Reliability Program.

In a letter received by the DOE Office of Hearings and Appeals (OHA) on November 2, 2004, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On November 10, 2004, I was appointed as Hearing Officer in this case. After conferring with the individual and the appointed DOE Counsel, 10 C.F.R. § 710.24, a hearing date was established. At the hearing, the DOE Counsel called the DOE Psychiatrist as the sole witness on behalf of DOE Security. Apart from testifying on his own behalf, the individual called two witnesses, his fiancée and a co-worker who is also a close friend. The transcript taken at the hearing will be hereinafter cited as "Tr.". Various documents that were submitted by the DOE

Counsel and the individual during this proceeding constitute exhibits to the hearing transcript and will be cited respectively as "DOE Exh." and "Ind. Exh.".

### Summary of Findings

The following factual summary is essentially uncontroverted. However, I will indicate instances in which there are disparate viewpoints regarding the information presented in the record.

The individual accepted a position with a DOE contractor in 2002, and his employer requested a security clearance for the individual to enable him to perform work duties in a secured area. Accordingly, the individual submitted a Questionnaire for National Security Positions (QNSP), dated November 14, 2002, and a background investigation of the individual was initiated. Information provided by the individual in his QNSP and the background investigation revealed derogatory information relating to the individual's consumption of alcohol. A Personnel Security Interview (PSI) was therefore conducted with the individual on October 3, 2003. Subsequent to the PSI, DOE Security referred the individual to the DOE Psychiatrist, who conducted a psychiatric interview of the individual on December 5, 2003. The individual's history of alcohol use, as described by the individual during the PSI and psychiatric interview, is summarized below.

The individual began drinking in high school as a way to be accepted by his peers. By his latter high school years, however, the individual admittedly drank to the point of intoxication on many weekends. On one occasion in 1998, the individual lost control of his car while trying to drive home intoxicated and rolled his car in a ditch. After completing high school, the individual enlisted in a branch of the U.S. military (Military), in which he served from June 1999 to December 2001. While in the Military, the individual's use of alcohol escalated. The individual was arrested and received an Article 15 on three separate occasions, first in October 2000 for underage drinking, second in February 2001 for DUI, and finally in October 2001 again for underage drinking. The individual informed the DOE Psychiatrist that prior to his first arrest in October 2000, he was getting intoxicated every weekend and there was a month in which he drank five nights a week. After his second arrest, the individual was required to attend a weekly alcohol education and treatment class, from February through July 2001. The individual stated during the PSI that he wanted to stop drinking but did not take the class seriously, and therefore resumed drinking after completing the class. For performance of his Military duties, the individual given a high-level Department of Defense (DOD) security clearance and was certified under the Personnel Reliability Program (PRP). The individual was temporarily decertified from the PRP after his first arrest. Following his second arrest and Article 15, the individual was permanently decertified from the PRP and his DOD security clearance was rescinded.

As a result of his third arrest and Article 15 in October 2001, the individual was placed in confinement for 30 days and again required to attend an alcohol treatment class. The individual ultimately received a general discharge from the Military in December 2001. Upon being discharged, the individual began to take more seriously the difficulties that his alcohol use had caused him and attended Alcoholics Anonymous (AA) on his own volition for a month after getting out of the Military. However, the individual found AA to be depressing and therefore stopped attending. The individual continued to drink, typically with acquaintances he made while in the Military. The individual reported to the DOE Psychiatrist that from December 2001 until April 2002, the individual drank to the point of intoxication three or four times.

However, in April 2002, the individual's drinking began to subside after meeting a young woman who became his girlfriend and ultimately his fiancée. The individual and his girlfriend began living together in October 2002. At the time the individual saw the DOE Psychiatrist in December 2003, the individual reported that he had consumed alcohol less than 20 times during the preceding year. The individual reported his most recent consumption of alcohol prior to psychiatric interview as Thanksgiving 2003, when he consumed three 16-ounce draft beers. The individual could recall getting intoxicated on only one occasion during the year preceding his psychiatric interview, when he consumed five beers while at a friend's house in January 2003. The individual was continuing to drink at the time that he saw the DOE Psychiatrist but the individual stated that he limited his drinking to having no more than three beers in an evening. Although the individual admitted to having a persistent desire to control his drinking, he did not express to the DOE Psychiatrist an intention to stop drinking altogether.

Prior to conducting his psychiatric interview, the DOE Psychiatrist reviewed pertinent background information contained in the individual's security file. In his report, issued on December 11, 2003, the DOE Psychiatrist diagnosed the individual with Substance Dependence, Alcohol, Active with Physiological Dependence, based upon criteria set forth in *The Diagnostic and Statistical Manual of the American Psychiatric Association, IVth Edition TR (DSM-IV TR)*. According to the DOE Psychiatrist, this is an illness which causes or may cause a significant defect in the individual's judgment or reliability, until such time as the individual is able to demonstrate adequate evidence of rehabilitation or reformation. In this regard, the DOE Psychiatrist recommended either of the following as evidence of rehabilitation: 1) total abstinence for one year with 200 hours of attendance at AA, with a sponsor, at least once a week over a minimum of one year, or 2) total abstinence for two years with satisfactory completion of a minimum of 50 hours of a professionally led, substance abuse treatment program over six-month period, with aftercare. As adequate evidence of reformation, the DOE Psychiatrist recommended two years of abstinence if the individual completes either of the two rehabilitation programs, or three years of abstinence if he does not.

## II. Analysis

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal matter, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. *See Personnel Security Hearing*, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In this type of case, we are dealing with a different standard designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once DOE Security has made a showing of derogatory information raising security concerns, the burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard implies that there is a strong presumption against the granting or restoring of a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual should not be granted an access authorization since I am unable to conclude that such approval would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(d). The specific findings that I make in support of this determination are discussed below.

### A. Criteria H & J; Mental Condition, Use of Alcohol

Based upon the individual's admitted history of excessive alcohol use, and the report and diagnosis of the DOE Psychiatrist, I find that DOE Security properly invoked Criteria H and J in denying the individual's request for a security clearance. The individual drank heavily during his three and one-half years in the Military, from June 1999 to December 2001, resulting in three arrests and Article 15 citations, and his

ultimate discharge. Based upon the individual's level of alcohol consumption during this time, the DOE Psychiatrist diagnosed the individual with Alcohol Dependence, under *DSM IV TR* criteria. DOE Exh. 4 at 16; Tr. at 55. In other DOE security clearance proceedings, Hearing Officers have consistently found that a diagnosis related to excessive alcohol use raises important security concerns. *See, e.g., Personnel Security Hearing*, Case No. VSO-0079, 25 DOE ¶ 82,803 (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0042, 25 DOE ¶ 82,771 (1995) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0014, *aff'd*, *Personnel Security Review*, 25 DOE ¶ 83,002 (1995) (affirmed by OSA, 1995). As observed in these cases, an individual's excessive use of alcohol might impair his judgment and reliability, and his ability to control impulses. These factors amplify the risk that the individual will fail to safeguard classified matter or special nuclear material. *Id.* Accordingly, I will turn to whether the individual has presented sufficient evidence of rehabilitation or reformation to mitigate the security concerns of DOE Security.

The individual conceded at the hearing that he drank habitually to excess while in the Military, which the individual described as "a party phase" of his life. Tr. at 27. According to the individual, "[i]t was trying to go out, make friends, meet women, and it ended up turning into something that got very serious very quickly, and I just didn't recognize it." *Id.* The individual has presented considerable evidence that his alcohol consumption has continually diminished since leaving the Military, and particularly since meeting his girlfriend in April 2002. They began living together in October 2002, and became engaged in September 2004. Tr. at 10. The individual's fiancée has two small children by a previous relationship and individual has assumed a parenting role. Tr. at 13. The individual testified that after committing to their relationship, "I stopped wanting to drink to excess, I didn't want to get drunk anymore, . . . there was a major change in my life, and everything I've done since that point has been nothing but changes for the better." Tr. at 29.

Within four months of meeting his fiancée, the individual enrolled in college and has continued to maintain a substantial course load<sup>2/</sup> in addition to working full time with the DOE contractor. Tr. at 29. According to the individual: "I've been taking on as full a schedule as I can handle, because I have a direction I'm pushing myself towards. I want to be an engineer. I want to take care of my family." *Id.* Employment records submitted by the individual, and the testimony of his co-worker, indicate that the individual is a reliable and conscientious worker. *See* Ind. Exh. 4 (Ironman Award), Ind. Exh. 6 (Performance Appraisal); Tr. at 20. The individual's fiancée is also enrolled

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<sup>2/</sup> The individual submitted his Fall 2004 transcript and his Spring 2005 course schedule, showing that the individual has enrolled in five courses each semester in engineering, mathematics and economics. Ind. Exh. 5. The individual's Fall 2004 transcript indicates that the individual has a cumulative grade point average of 4.13 on a 4.0 scale. *Id.* The individual is due to graduate in 2007. Tr. at 34.

in school. Tr. at 13. The individual therefore spends much of his time at home caring for his fiancée's two children when he is not working or attending classes. Tr. at 15. The individual purchased a home in April 2004. *See* Ind. Exh. 3.

The individual further testified, and his fiancée corroborated, that he no longer associates with friends who consume alcohol. Tr. at 12, 40-41. According to the individual, he has consumed no alcohol since April 2004, eight months prior to the hearing, when he engaged in a toast with friends at his housewarming party. Tr. at 32.<sup>3/</sup> The individual further testified that he had consumed alcohol only once during the three months prior to that occasion, and that these were the only two times that he consumed alcohol during the year preceding the hearing. Tr. at 32-33. The individual testified that he had not been intoxicated since January 2003, two years prior to the hearing. Tr. at 40. Regarding his future intentions regarding use of alcohol, the individual stated: "I don't plan on drinking at all. It doesn't fit in my lifestyle. I don't have time to drink. I don't want to drink." Tr. at 33.

In August 2004, the individual obtained an evaluation by a Substance Abuse Counselor. In a one paragraph letter, the Substance Abuse Counselor states: "Based on [the individual's] disclosures and our assessment tools (Substance Abuse Subtle Screening Inventory) he did not appear to meet DSM IV Criteria for Substance Dependence/Abuse and treatment was not recommended. Our recommendation were to have [the individual] explore Alcoholics Anonymous as an opportunity to look at his relationship with alcohol." Ind. Exh. 1. The Substance Abuse Counselor did not testify at the hearing.

Notwithstanding the foregoing, the DOE Psychiatrist affirmed his diagnosis of Alcohol Dependence<sup>4/</sup> at the hearing. The DOE Psychiatrist also reasserted his opinion that the individual has still not presented adequate evidence of rehabilitation or reformation. Tr. at 55-57, 59-60. In his report, the DOE Psychiatrist recommended either of the following as evidence of rehabilitation: 1) total abstinence for one year with 200 hours of sponsored attendance at AA over a minimum of one year,<sup>5/</sup> or 2) total

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<sup>3/</sup> The individual's fiancée testified that she had not seen the individual consume any alcohol since the housewarming party, and that they do not keep alcohol in the house. Tr. at 14-15.

<sup>4/</sup> The DOE Psychiatrist clarified, however, that the modifier he attached to his Alcohol Dependence diagnosis in his report, "Active with Physiological Dependence," is no longer accurate. The DOE Psychiatrist stated that his current diagnosis of the individual is Alcohol Dependence "in Sustained Partial Remission." Tr. at 71.

<sup>5/</sup> The DOE Psychiatrist testified that he normally requires two years of AA for anyone he diagnoses with alcohol dependence, but relaxed his requirement to one year for the individual in view of his young age. Tr. at 61. The DOE Psychiatrist explained that he usually requires two years of AA because statistics show that 65 percent of alcoholics are  
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abstinence for two years with satisfactory completion of a minimum of 50 hours of a professionally led, substance abuse treatment program over a six-month period followed by aftercare. DOE Exh.4 at 19. Since the individual had failed to enroll in AA<sup>6/</sup> or an alternative treatment program, the DOE Psychiatrist was of the opinion that the individual still had not achieved adequate rehabilitation. Tr. at 60-61. In this regard, the DOE Psychiatrist did not accept the individual's explanation that he could not find time to attend AA or an alternative treatment program. Tr. at 67-68.

In view of the individual's positive changes in lifestyle, the DOE Psychiatrist testified that the individual was definitely showing signs of reformation. Tr. at 60. However, the DOE Psychiatrist was adamant that the individual has not yet shown sufficient reformation to mitigate the considerable risk of relapse. Tr at 62. As adequate evidence of reformation, the DOE Psychiatrist recommended in his report two years of abstinence if the individual completes either of the two rehabilitation programs, or three years of abstinence if he does not. DOE Exh. 4 at 19. At the hearing, the DOE Psychiatrist refused to relax the three-year abstinence requirement, and expressed his opinion that the individual had not achieved adequate reformation since the individual had been completely abstinent from alcohol for only eight months at the time of the hearing. Tr. at 62.<sup>7/</sup>

Moreover, despite the individual's present period of abstinence, the DOE Psychiatrist observed that the individual was not showing proper reformation based upon statements made by the individual during the hearing. Although the individual testified at one stage of the hearing that "I don't plan on drinking," Tr. at 33, he later said that "I don't believe I have an alcohol problem" and "I'll never delude myself into thinking that I'll never have another drink of alcohol again. . . . Can I say I'll never get drunk again? Yeah, I can say that." Tr. at 39, 45. According to the DOE Psychiatrist: "[F]or anybody that has a diagnosis of alcohol dependence, the only real acceptable drinking is not drinking, sobriety . . . [T]he prognosis for somebody who is alcohol dependent, if they drink, is that they are going to get in trouble drinking in the future.

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<sup>5/</sup> (...continued)  
able to stay sober after one year of AA, and 75 percent after two years. *Id.*

<sup>6/</sup> I note that the Substance Abuse Counselor also recommended in his letter that "[the individual] explore Alcoholics Anonymous as an opportunity to look at his relationship with alcohol." Ind. Exh. 1.

<sup>7/</sup> I note that the individual would not come close to the three years of abstinence recommended by the DOE Psychiatrist even excluding the individual's most recent consumption of alcohol, eight months prior to the hearing when he toasted at his housewarming celebration.



It doesn't mean that if you're ever diagnosed with alcohol dependence that you cannot drink in moderation in the future, but only a small percentage of people can do that. It's about ten percent." Tr. at 55-56. The DOE Psychiatrist expressed his concern that the individual had not yet made "an absolute commitment to sobriety." Tr. at 75.

Based upon the weight of the evidence presented in the record, I am compelled to agree with the opinion of the DOE Psychiatrist in this case, and find that the individual has not yet demonstrated adequate rehabilitation and reformation. It is clear from the record in this case that during his term in the Military from June 1999 to December 2001, the individual reached a severe level of Alcohol Dependence, as indicated by his three arrests, thirty days confinement and discharge.<sup>8/</sup> The individual initially contested the DOE Psychiatrist's diagnosis of Alcohol Dependence. Tr. at 46-47. However, under questioning, the individual conceded that, while in the Military, he met all of the four criteria relied upon by the DOE Psychiatrist in reaching this diagnosis, i.e. the individual developed a high tolerance for alcohol, drank more than intended, had a persistent desire but unsuccessful efforts to stop drinking, and important occupational activities were given up because of his alcohol use. Tr. at 48-49.<sup>9/</sup> I can attach little weight to the letter submitted by the individual from the Substance Abuse Counselor, stating that the individual does not appear to meet the criteria for Alcohol Dependence. Ind. Exh. 1. The letter does not specify the information or time period upon which this conclusion is based, and the Substance Abuse Counselor did not testify at the hearing to provide such clarification.

I highly commend the individual for the substantial strides he has made in his personal life, in resuming his education, purchasing a home and assuming family responsibilities. I have further taken into consideration the individual's age at the time of his heavy drinking. Clearly, the individual now displays a more mature attitude than indicated by his behavior while in the Military. Nonetheless, I find that in the absence of alcohol treatment or a longer period of abstinence, a cognizable risk remains at this time that he will relapse into getting intoxicated on a habitual basis.<sup>10/</sup>

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8/ During the PSI, the individual stated "I originally planned to go to school when I went into the [Military] and I never did it. And I think the main reason why I never went to school was because I was drinking so much and I didn't really have the motivation to do anything else." DOE Exh. 8 at 37-38.

9/ Under the *DSM-IV TR*, a diagnosis of Substance Dependence is appropriate for a given subject if he meets any three of seven specified criteria within a twelve-month period. See DOE Exh. 4 at 15-16.

10/ The DOE Psychiatrist summarized: "[Y]ou haven't gone through any of the rehabilitation programs, you have eight months of sobriety . . . . With making a statement that you'll  
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Section 710.7(a) of the security regulations provide that “[a]ny doubt as to an individual’s access authorization eligibility shall be resolved in favor of national security.” 10 C.F.R. § 710.7(a). Consequently, I must find that the individual has not yet overcome the security concerns associated with his past use of alcohol, and I cannot recommend granting the individual a security clearance at this time. *See Personnel Security Hearing*, Case No. VSO-0359, 28 DOE ¶ 82,768 (2000), *aff’d*, *Personnel Security Review*, 28 DOE ¶ 83,016 (2001); *Personnel Security Hearing*, Case No. TSO-0011, 28 DOE ¶ 82,912 (2003); *cf. Personnel Security Hearing*, Case No. TSO-0001, 28 DOE ¶ 82,911 (2003).

#### B. Criterion L, Unusual Conduct

Under Criterion L, the Notification Letter cites the individual’s three arrests and Article 15 infractions, and his removal from the PRP while in the Military. As described in the factual summary, each of these occurrences stemmed from the individual’s excessive use of alcohol. As discussed above, I have found that the individual has not yet overcome the security concerns associated with his past alcohol use. I therefore find, correspondingly, that the individual has not yet overcome the concerns of DOE Security under Criterion L.

### III. Conclusion

I find that DOE Security properly invoked 10 C.F.R. §§ 710.8(h), (j) and (l) in denying the individual’s request for an access authorization. For the reasons set forth in this Decision, I further find that the individual has not adequately mitigated the associated security concerns. I am therefore unable to find that granting the individual an access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual should be denied an access authorization at this time. The individual may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Fred L. Brown  
Hearing Officer  
Office of Hearings and Appeals

Date: April 7, 2005

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10/ (...continued)

probably be abstinent, but if you drink, it would just be one drink, I can’t make an opinion that your risk of relapse in the next five years is low.” Tr. at 62.